

REMARKS

The present application was filed on November 26, 2003 with claims 1-29. Claims 1-29 are pending and claims 1, 15, and 29 are the pending independent claims.

In the outstanding Final Office Action dated February 2, 2007, Examiner: (i) rejected claims 1-29 under 35 U.S.C. § 112, first paragraph; (ii) rejected claims 14 and 28 under 35 U.S.C. § 112, second paragraph; (iii) rejected claims 1, 3-15, and 17-29 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,130,936 to Sheppard et al. (hereinafter "Sheppard") in view of Williams et al., Efficient Regression Testing of Multi-Panel Systems (hereinafter "Williams"); and (iv) rejected claims 2 and 16 under 35 U.S.C. §103(a) as being unpatentable over Sheppard in view of Williams, and U.S. Patent No. 6,950,782 to Qiao et al. (hereinafter "Qiao").

In response to the Final Office Action, Applicants have amended claims 1, 6-11, 15, 20-25, and 29.

In regard to the rejection of claims 1-29 under 35 U.S.C. § 112, first paragraph, Applicants have amended independent claims 1, 15, and 29 to clarify the subject matter of such claims. Claims 1, 15, and 29 now recite "adaptively refining the at least one executed test group" rather than "test case." Support for these amendments can be found at pg. 5, lns. 15-30 and pg. 6, lns. 1-12 of the Specification. Applicants have also amended dependent claims 6-7, 10-11, 20-21, and 24-25 for consistency and clarity. Accordingly, withdrawal of the §112, first paragraph, rejection of claims 1-29 is respectfully requested.

In regard to the rejection of claims 14 and 28 under 35 U.S.C § 112, second paragraph, Applicants respectfully assert that such claims particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The Examiner contends that the use of the term "substantially," in claims 14 and 28, render the claims indefinite (Final Office Action; page 5, para. 7). Applicants respectfully disagree with this contention and assert that it is well-settled law that the use of the word "substantially" in a claim does not inevitably introduce fatal ambiguity into the claim. Rather, "words of degree are entirely appropriate 'when serving reasonably to describe the claimed subject matter to those of skill in the field of invention, and to distinguish the claimed subject matter from the prior art.'" *Chemical Separation Technology Inc. v. United States*, 63

USPQ2d 11 1114, 1130 (Fed. Cl. 2002) (citing *Andrew Corp. v. Gabriel Electronics, Inc.*, 847 F.2d 819, 821 (Fed. Cir. 1988)).

“[T]he term ‘substantially’ in patent claims gives rise to some definitional leeway . . . Patentees may use these terms to avoid unduly limiting the modified word. Thus, the term ‘substantially’ may prevent avoidance of infringement by minor changes that do not affect the results sought and accomplished.” *C.E. Equipment Co., Inc. v. United States*, 17 Cl.Ct. 293, 299 [13 USPQ2d 1363] (1989). The present specification does not assign any special meaning to the term “substantially,” and, as such, the phrase “substantially” as used in the context of the subject claims simply means that the test group provides coverage across the application in a manner that is complete or as nearly complete as possible. Accordingly, withdrawal of the §112, second paragraph, rejection of claims 1, 3-15, and 17-29 is respectfully requested.

In regard to the rejection of claims 1, 3-15, and 17-29 under 35 U.S.C. § 103(a) as being unpatentable over Sheppard in view of Williams, Applicants have amended independent claims 1, 15, and 29 to clarify the subject matter of such claims. Independent claims 1, 15, and 29 now recite “[a] method of problem determination in a distributed service-based application, comprising the steps of obtaining, via one or more probes, at least one testing result of the application through execution of at least one test group, wherein the test group comprises one or more test cases, and adaptively refining the at least one executed test group when the at least one testing result comprises at least one failure, to expose at least one problem that caused the at least one failure, wherein the step of adaptively refining the at least one executed test group comprises at least one of generating one or more new test cases and refining the one or more probes.” Support for these amendments can be found at pg. 5, lns. 15-30; pg. 6, lns. 1-12, 20-25; pg. 9, 26-30; pg. 10, 1-4 of the Specification.

Applicants respectfully assert that the combined teaching of Sheppard and Williams fails to render such claims as obvious. Sheppard fails to teach the adaptive refining of test groups; this assertion is not far removed from Examiner conceding the fact that Sheppard fails to teach refining a test case (Final Office Action, pg. 6, ln. 8). Sheppard makes no mention of refined test groups; instead, Sheppard applies a method of selecting tests from a predefined set of test methods. In addition, unlike the claims, Sheppard fails to teach the generation of new test cases and the

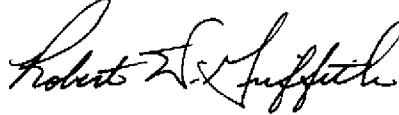
refinement of probes. Applicants assert that Sheppard does not use the term “probes” nor does Sheppard describe a probing system that can be used in a distributed service-based application.

Applicants further assert that Williams fails to remedy the deficiencies of Sheppard. Williams does not teach obtaining testing results via one or more probes. Furthermore, like Sheppard, Williams does not teach the refining of one or more probes. For at least these reasons, independent claims 1, 15, and 29 are not obvious in view of the combined teaching of Sheppard and Williams. It follows that dependent claims 3-14 and 17-28 are patentable at least by virtue of their dependency from claims 1 and 15. Dependent claims 3-14 and 17-28 also recite patentable subject matter in their own right. Accordingly, withdrawal of the §103(a) rejection of claims 1, 3-15, and 17-29 is respectfully requested.

In regard to rejected claims 2 and 16 under 35 U.S.C. §103(a) as being unpatentable over Sheppard in view of Williams and Qiao, Applicants assert that Qiao fails to remedy the deficiencies of Sheppard and Williams as described above. For at least this reason, claims 2 and 16 are not obvious in view of the combined teaching of Sheppard, Williams, and Qiao, due to their dependency on amended claims 1 and 15. Furthermore, dependent claims 2 and 16 recite patentable subject matter in their own right. In contrast to Examiner’s argument, Applicants assert that a distributed service-based application is unlike a diagnostic and repair system for computer-controlled machinery (e.g., motor vehicles with onboard diagnostic systems); the two technologies are separate and distinct, and no person having ordinary skill in either art would consider the two equivalent. Therefore, the combined teaching of Sheppard, Williams, and Qiao fail to provide the requisite support for an obviousness rejection with respect to claims 2 and 16. Accordingly, withdrawal of the §103(a) rejection of claims 2 and 16 is respectfully requested.

In view of the above, Applicants believe that claims 1-29 are in condition for allowance, and respectfully request withdrawal of the §112 and 103(a) rejections.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert W. Griffith". The signature is fluid and cursive, with the first name "Robert" and last name "Griffith" clearly legible.

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